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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON THE PROMOTION AND
PROTECTION OF HUMAN RIGHTS

Fifty-first session

SUMMARY RECORD OF THE 24th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 20 August 1999, at 10 a.m.

Chairman: Mr. HATANO

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(c) GROSS AND MASSIVE VIOLATIONS OF HUMAN RIGHTS AS AN INTERNATIONAL CRIME;

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The meeting was called to order at 10.05 a.m.

THE ADMINISTRATION OF JUSTICE AND HUMAN RIGHTS:

(a) QUESTION OF HUMAN RIGHTS AND STATES OF EMERGENCY;

(b) APPLICATION OF INTERNATIONAL STANDARDS CONCERNING THE HUMAN RIGHTS OF DETAINED JUVENILES;

(c) GROSS AND MASSIVE VIOLATIONS OF HUMAN RIGHTS AS AN INTERNATIONAL CRIME;

(d) JUVENILE JUSTICE;

(e) PRIVATIZATION OF PRISONS;

(f) INDIVIDUALIZATION OF PROSECUTION AND PENALTIES, AND REPERCUSSIONS OF VIOLATIONS OF HUMAN RIGHTS ON FAMILIES

(agenda item 9) (continued) (E/CN.4/Sub.2/1999/24, 31, and 36; E/CN.4/Sub.2/NGO/3 and 23; E/CN.4/Sub.2/1998/19; E/CN.4/Sub.2/1999/WG.1/CRP.1)

1. Mr. NAZARIAN (Observer for Armenia) said that one of the most tragic examples of government-sanctioned violence against a minority was the fate of the Armenian population in Azerbaijan, which, during the closing years of the Soviet era and the first years of independence, had been the victims of ethnic-cleansing policies. Not only had the authorities taken no steps to prevent hundreds of people being killed, tortured and burnt alive by armed mobs, the Minister of Internal Affairs of Azerbaijan had specifically targeted civilians of Armenian origin in a number of areas. The responsibility of Governments which incited or tolerated such violence and that of the individuals who perpetrated the crimes were inseparable.

2. While early identification of threatening situations could prepare the ground, it was also essential to define the responsibility of both States and the individuals involved, in which context his Government welcomed the efforts to create effective legal mechanisms to combat impunity and restore State accountability, an example of which was Commission resolution 1999/34. He also wished to express his Government's deep appreciation of the work carried out by the Sub-Commission's experts on the classification of gross and massive violations of human rights as an international crime.

3. Ms. MOTOC said that Mr. Fix Zamudio's interim report (E/CN.4/Sub.2/1999/WG.1/CRP.1) presented a wealth of information and deserved attentive study. She had particularly appreciated the comparison drawn between Anglo-American and Romano-Germanic law in the constitutional field. He should be encouraged to continue his work on the distinction between universal and regional international human rights law, a very important subject, particularly with regard to the convergence of Latin American legislation and the emerging distinctive characteristics of European legislation.

4. It would also be interesting to consider how human rights legislation had developed in the former Central and Eastern European States and, for instance, what measures had been adopted for the restitution of property by the post-communist regimes. Another potentially significant topic would be the various ways in which countries of that area had dealt with the problem of responsibility. With regard to the Procurator's office as an instrument for the protection of human rights in the surviving socialist countries, it would be of considerable importance to determine how those States viewed the relationship between socialist legality and human rights.

Statements in exercise of right of reply

5. Mr. MAJDI (Observer for Morocco), said he wished to assure the representatives of the two non-governmental organizations (NGOs) who had expressed the hope that Morocco would agree to settle the claims for compensation of former disappeared persons, that his Government had undertaken to settle various outstanding cases, including those of the disappeared persons. That policy had been recently reaffirmed by the new King, who had given instructions for the establishment of an independent arbitration commission composed of three legal officials, four members of the Advisory Council on Human Rights, a representative of the Ministry of the Interior, and a representative of the Ministry of Justice. The commission would consider claims for compensation submitted from 1 September to the end of December of the current year, and he appealed to those concerned to supply more detailed information on the cases of persons alleged to have disappeared in order to facilitate investigations.

6. Mr. ALEMU GETAHUN (Observer for Ethiopia) said that the person representing the so-called International Movement for Fraternal Union Among Races and Peoples - who was well-known for conducting a hate campaign against the democratically elected Government of Ethiopia - had had the temerity to brand the entire Ethiopian judiciary as "political appointees" and "incompetents". The fact was that the individuals in whose defence that representative had spoken had been tried for participation in massive violations of human rights during the former brutal military dictatorship or for violent acts against law and order.

7. Dr. Taye and his associates, after a trial in which they had been able to exercise to the full their right of defence, had been sentenced to various terms of imprisonment for organizing and arming a clandestine illegal group. The facts in the case of Professor Woldeyes were that he had become ill while serving a prison sentence imposed by the Federal High Court and, after hospital treatment, had been allowed, on humanitarian grounds, to travel to the United States of America, where he had died during treatment. The Ethiopian Government was no way responsible for that unfortunate outcome.

8. The democratic process was proceeding rapidly in Ethiopia, and multi-party elections would be held in May 2000. The establishment of peace and stability accompanied by a remarkable growth in political pluralism

and economic liberalization were recognized by all objective observers. Mr. Weissbrodt had referred to the case of a young girl acquitted for killing in self-defence a man who had raped her to force her into marriage. The Ethiopian Government was concerned to promote the advancement of women, and penal and civil codes were being reviewed to that end with the full participation of women's rights advocates, religious leaders and civil society at large.

9. Mr. MERIC (Observer for Turkey) said that he wished to protest about the procedural abuse committed by an NGO, Centre Europe-Tiers Monde, in acting as an umbrella for the lawyers of the Kurdish terrorist Öcalan, who had been responsible for the murder of over 30,000 people. He asked the Chairman to have the legality of that situation investigated.

10. Mr. SALAMA (Observer for Egypt) said that the criticisms made at the preceding meeting by a representative of the International Federation of Human Rights Leagues of the Egyptian Associations and Civil Society Act, promulgated in May 1999, showed a misunderstanding of the legislation, which had to be seen against its historical background. The Act reflected a considerable advance over the previous legislation, which dated from 1964, in respect of the freedoms afforded to Egyptian NGOs. The Act had been drafted following broad national consultation, in which Egyptian NGOs had participated.

11. Some reservations had been expressed by the NGOs, after the promulgation of the Act with regard to some ambiguities of expression and differences of interpretation and those reservations had been the subject of open and frank discussion. It was an indication of the positive attitude of the NGOs to the Act, however, that they had been taking the necessary steps to be registered under the new regulations.

12. The Egyptian NGOs and the public authorities shared a common goal, namely to ensure more effective and freer participation by Egyptian civil society in all areas of national activity. His delegation would be glad to make available to all interested NGOs the entire text of the Act in English, together with the texts of the press conference and communiqué issued by the Minister of Social Affairs, containing his response to points that had been raised, providing details on the legislation and clarifying its objectives.

13. Mr. SHAIKHO (Observer for Bahrain) said that a highly inaccurate statement about his country had been made by the representative of an NGO. The Sub-Commission had already received a full and clear account of the current situation in Bahrain under agenda item 2 and was aware of the Government's coordinated strategies for the promotion and development of human rights that were initiating a new era there.

FREEDOM OF MOVEMENT:

(a) THE RIGHT TO LEAVE ANY COUNTRY, INCLUDING ONE'S OWN, AND TO RETURN TO ONE'S OWN COUNTRY, AND THE RIGHT TO SEEK ASYLUM FROM PERSECUTION;

(b) HUMAN RIGHTS AND POPULATION DISPLACEMENTS

(agenda item 10) (E/CN.4/Sub.2/1999/45; E/CN.4/Sub.2/1997/47; E/CN.4/Sub.2/1999/NGO/10 and 19)

14. Ms. CECHUROVA (Transnational Radical Party) said that, since the military annexation by China of Tibet, Eastern Turkestan and Inner Mongolia some 50 years previously, those countries had been the destination of massive transfers of ethnic Chinese, which, combined with the severe birth control policy of the People's Republic had faced the indigenous Tibetans, Uyghurs and Mongols with the prospect of becoming small minorities in their own homelands. The average income of those indigenous people amounted to only about a quarter or a third of the income of the Chinese settlers, their forests had been chopped down, and they were deprived of proper medical treatment and sanitation.

15. His organization sought the support of the Sub-Commission in urging that any funding - such as that under consideration by the World Bank for the China Western Poverty Reduction Project, which included the resettlement of some 60,000 Chinese in the Amdo Province of Tibet, or any cooperative agreements or multilateral assistance to the People's Republic of China should be made conditional on respect for the wellbeing of the indigenous peoples concerned and on improvements in the protection of human rights. The Sub-Commission should also support the appointment of a special rapporteur to investigate the human rights situation in the regions he had mentioned.

16. Mr. AL-ADHADH (Interfaith International) said that the Kuwaiti authorities had recently seized an Indian vessel proceeding from the port of Khawr al-Zubair in southern Iraq to Dubai in the United Arab Emirates with a cargo of over 300 tons of food and medical supplies for children. The captain of the vessel had admitted that it was the seventh cargo of its kind to be exported from Iraq that year with the blessing of the Iraqi authorities, who were thereby depriving the children of Iraq of basic necessities while blaming the existing shortages on economic sanctions. In the Secretary-General's most recent report to the Security Council on the implementation of the "oil-for-food" resolutions (S/1999/573), the Government of Iraq was urged to distribute the medical supplies worth US$ 300 million that still remained in its warehouses. Moreover, the United Nations Children's Fund (UNICEF) had blamed the Iraqi Government for the deteriorating public health situation in the country, particularly among children.

17. During the 1980s, the Iraqi regime had forced a quarter of a million Iraqi Kurds to emigrate to the Islamic Republic of Iran, accusing them of non-allegiance to the ruling Baath Party and the Revolution. It had destroyed over 5,000 Kurdish villages in northern Iraq, forcing over 1.5 million villagers to live in tents. Worst of all, it had attacked Kurdish areas with chemical weapons, causing further mass migration.

18. In mid-1991, the Iraqi armed forces had encircled the marshland in the south of the country, bombarding the area over a four year period and draining the marshes in order to destroy the natural environment on which the marsh Arabs depended for their livelihood. Tens of thousands of them had been forced to live in camps surrounded by barbed wire close to the main southern towns. Over 200,000 more had fled to the Islamic Republic of Iran.

19. During the past two years, the regime had forced tens of thousands of members of the Turkoman minority to move from the city of Kirkuk to the Kurdish region of northern Iraq and replaced them by Arabs.

20. The regime had recently bulldozed a large number of houses in the main cities of southern Iraq, in Rumaythah in central Iraq and in the suburbs of Baghdad, evicting their owners and their families and arresting the male occupants, alleging that they were enemies of the ruling Party.

21. He urged the Sub-Commission to join in the efforts of the international community to put an end to such inhuman practices.

22. Mr. WARIKOO (Himalayan Research and Cultural Foundation), while expressing appreciation of the report of the Special Representative of the Secretary-General on internally displaced persons (E/CN.4/1999/79 and Add.1 and 2), said that his organization did not think that the issue of religious persecution and terrorist violence, which had caused major population displacements in parts of south and central Asia, had been adequately addressed. He had in mind the sufferings of some 400,000 displaced Kashmiri Hindus who were entering the tenth year of their dispersal into camps in various parts of India. They had been deprived by religious extremist and terrorist organizations of all their rights.

23. Having "cleansed" the Kashmir valley of its Hindu minority, Pakistan had trained its guns on the Gujjar and Hindu population of the border areas, and a similar fate had been undergone by the Shia Muslim population of Kargil, which had refused to toe the pro-Pakistani line.

24. Yet another case of Islamist extremist persecution of ethnic-religious minorities had been the recent Taliban offensive against the Tajiks, nearly 300,000 of whom were reported to have been expelled from their homes. The restoration to all those persecuted people of their homelands with security and freedom of religion was an essential prerequisite for peace and security in south and central Asia.

ORGANIZATION OF WORK (agenda item 1) (continued)

(c) METHODS OF WORK OF THE SUB-COMMISSION (continued)

Procedure for consideration and action on draft resolutions

25. The CHAIRMAN said that, in addition to the usual procedures for consideration and action on draft resolutions, the Bureau had decided to propose that members of the Sub-Commission should speak for not more than three minutes when commenting on draft resolutions or introducing proposals or

amendments, and for not more than five minutes when introducing a draft resolution. Additional speaking time would be granted, at the discretion of the Chairman, in exceptional circumstances.

26. He reminded the Sub-Commission that it had been authorized by the Economic and Social Council to proceed to a vote by secret ballot if the majority of members present and voting so requested.

27. Mr. BOSSUYT proposed that the Sub-Commission should decide to vote by secret ballot whenever a vote was requested on proposals pertaining to allegations of violations of human rights in countries, under any agenda item, including proposals of a procedural nature relating to proposals of a substantive nature. His proposal reproduced the wording of Sub-Commission decision 1998/102.

28. Mr. ALFONSO MARTINEZ said he supported the proposed limit of three minutes on speaking time on the understanding that it was applicable to each separate contribution by members to the discussion on a particular topic and not to their aggregate contribution thereto.

29. As in previous years, he wished to place on record his opposition to the secret ballot procedure. However, he would defer on that score to the opinion of the majority of the members of the Sub-Commission. On the other hand, he failed to see any justification for a secret ballot on matters that did not come under agenda items 2 and 13. The Sub-Commission would be setting an unacceptable precedent if it introduced a country-specific element into other agenda items. Thematic matters with a country-specific dimension were already addressed under agenda item 2.

30. The CHAIRMAN confirmed that the three-minute limit on speaking time was not applicable to the entire discussion on a particular topic.

31. Mr. FAN Guoxiang said he agreed with Mr. Alfonso Martínez that there was no justification for holding secret ballots on matters other than those falling under agenda items 2 and 13.

32. Mr. BOSSUYT said that there was no rule prohibiting members from submitting draft resolutions that mentioned specific countries under other agenda items. It was only logical, therefore, that the secret ballot provision should be applicable to such cases.

33. Mr. ALFONSO MARTINEZ said that the ballot procedure for draft resolutions under other agenda items should be discussed on a case-by-case basis. He therefore proposed deleting the words "under any agenda item" from Mr. Bossuyt's proposal and requested a roll-call vote on the proposed amendment.

34. Mr. FAN Guoxiang, Mrs. WARZAZI and Mr. YIMER said that they would not participate in the vote.

35. A vote was taken by roll-call on the amendment proposed by Mr. Alfonso Martínez.

36. Mr. Diaz-Uribe, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: Mr. Alfonso Martínez.

Against: Mr. Bengoa, Mr. Bossuyt, Mrs. Daes, Mr. Diaz-Uribe, Mr. Eide, Mr. Fix Zamudio, Mr. Guissé, Ms. Hampson, Mr. Joinet, Mr. Khalifa, Mr. Mehedi, Ms. Motoc, Mr. Oloka-Onyango, Mr. Park Sang-yong, Mr. Pinheiro, Mr. Ramishvili, Mr. Shamshur, Mr. Sik Yuen, Mr. Sorabjee, Ms. Udagama, Mr. Weissbrodt.

Abstaining: None.

37. The amendment proposed by Mr. Alfonso Martínez was rejected by 21 votes to 1.

38. At the request of Mr. Alfonso Martínez, a vote was taken by roll-call on the proposal by Mr. Bossuyt.

39. Mr. FAN Guoxiang said he would not participate in the vote.

40. Mr. Pinheiro, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: Mr. Bengoa, Mr. Bossuyt, Mrs. Daes, Mr. Diaz-Uribe, Mr. Eide, Mr. Fix Zamudio, Mr. Guissé, Ms. Hampson, Mr. Joinet, Mr. Khalifa, Mr. Mehedi, Ms. Motoc, Mr. Oloka-Onyango, Mr. Park Sang-yong, Mr. Pinheiro, Mr. Ramishvili, Mr. Shamshur, Mr. Sik Yuen, Mr. Sorabjee, Ms. Udagama, Mrs. Warzazi, Mr. Weissbrodt, Mr. Yimer.

Against: Mr. Alfonso Martínez.

Abstaining: None.

41. Mr. Bossuyt's proposal was adopted by 23 votes to 1.

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING POLICIES OF RACIAL DISCRIMINATION AND SEGREGATION, IN ALL COUNTRIES, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES: REPORT OF THE SUB-COMMISSION UNDER COMMISSION ON HUMAN RIGHTS RESOLUTION 8 (XXIII) (agenda item 2) (continued) (E/CN.4/Sub.2/1999/L.5-L.7, L.12/Rev.1 and L.15-19)

42. Mr. JOINET, supported by Mr. ALFONSO MARTÍNEZ and Mr. GUISSÉ, proposed that the Sub-Commission should first consider the draft resolution on the situation of human rights in Togo (E/CN.4/Sub.2/1999/L.7) because of the imminent departure of the Togolese Minister for the Promotion of Democracy and the Rule of Law who had come to Switzerland for the express purpose of attending the Sub-Commission's session.

43. It was so decided.

Draft resolution on the situation of human rights in Togo
(E/CN.4/Sub.2/1999/L.7)

44. Mr. JOINET said he wished to inform his co-sponsors that, following the circulation of the original text of the draft resolution, the Sub-Commission had learned of the decision taken by the Government of Togo to set up an international commission of inquiry into the hundreds of summary executions that had allegedly taken place there in 1998. The sponsors had thought it desirable to support that initiative, provided that sufficient guarantees were given of the commission's independence and impartiality; and the draft resolution had been revised accordingly.

45. As the Government of Togo had no permanent mission in Geneva, the Togolese Minister for the Promotion of Democracy and the Rule of Law and the Togolese Ambassador and Permanent Representative in New York had agreed to come specially to Geneva for consultations with the representative of the High Commissioner for Human Rights and himself. During those consultations it had been agreed that the draft resolution should be withdrawn and replaced by a draft Chairman's statement, the text of which members had before them for their consideration.

46. The CHAIRMAN invited the Minister for the Promotion of Democracy and the Rule of Law of Togo to take the floor to express the point of view of his Government.

47. Mr. OLYMPIO (Minister for the Promotion of Democracy and the Rule of Law of the Togolese Republic), having expressed his Government's gratitude to the Office of the High Commissioner for Human Rights (OHCHR) and the Sub-Commission for the efforts they had expended on behalf of Togo, said that the allegations of extrajudicial executions contained in the report published by Amnesty International on 5 May 1999 were unfounded. The report was also a biased one, relying exclusively on assertions made by members of the political opposition. It was curious that neither the foreign observers supervising the June 1998 presidential elections nor any of the Western diplomats accredited to Togo had seen any evidence to support the allegations ... .

48. Mr. SORABJEE, speaking on a point of order and supported by Mr. JOINET and Mr. PINHEIRO, said that the Minister should confine his remarks to the agreed text of the Chairman's draft statement.

49. Mr. OLYMPIO (Minister for the Promotion of Democracy and the Rule of Law of the Togolese Republic) said that, on the initiative of his Government, a commission of inquiry would shortly be set up, under the twofold aegis of the Secretaries-General of the United Nations and the Organization of African Unity (OAU), which would speedily investigate the allegations in accordance with international norms.

50. Mr. JOINET said that, in the light of the outcome of the talks with the representatives of the Togolese Government, he hoped that the sponsors could withdraw the draft resolution (E/CN.4/Sub.2/1999/L.7), on condition that it be replaced by the Chairman's statement the text of which had been mutually agreed to by the sponsors, the Togolese Government and OHCHR.

51. Mr. GUISSÉ, speaking as a sponsor of the draft resolution, said that, as the Government of Togo had proposed a form of collaboration that might prove satisfactory to all concerned, he was able to accept the proposal that the draft resolution be withdrawn from consideration by the Sub-Commission at its current session. However, the concerns the draft resolution reflected would not be dispelled until the commission of inquiry had brought its work to a satisfactory conclusion, and the situation would need to be reviewed at the Sub-Commission's next session.

52. Mrs. DAES, speaking as a sponsor of the draft resolution, said that, in the interests of encouraging Governments to engage in dialogue with the Sub-Commission and restore human rights in their countries, she was able to support the proposal that the draft resolution be withdrawn.

53. Mrs. WARZAZI said that, as a sponsor of the draft resolution, she, too, was able to accept the proposal to withdraw it. Nonetheless, the text of any Chairman's statement must be acceptable to all the members of the Sub-Commission. It was thus important that all of them be given sufficient time to familiarize themselves with such texts.

54. Mr. PINHEIRO speaking as a sponsor of the draft resolution, supported Mr. Guissé's comments. The statement should reflect the fact that the draft resolution had been withdrawn pending the outcome of the international commission of inquiry.

55. Mr. BENGOA said that it must be made quite clear that the case of Togo would be reviewed at the Sub-Commission's next session. The statement just made by the Togolese Minister had strayed from the agreed text and cast doubt on the validity of the outcome of the talks.

56. Mr. JOINET said that that was precisely the purport of the last sentence of the draft statement. The point could be made clearer by amending the words "would appreciate being informed" to read "requests to be informed".

57. Mr. MEHEDI said he agreed with Mrs. Warzazi. As a sponsor of the draft resolution, he would have liked to have been kept more fully informed of developments.

58. Mr. JOINET said that, since the agreement had been reached during talks begun and concluded the previous night, he had had no alternative but to inform members of their outcome at the current meeting.

59. Ms. HAMPSON said that, while she could join a consensus with regard to the Chairman's statement, she had a marked preference for the alternative wording of its last sentence just proposed by Mr. Joinet.

60. The CHAIRMAN said he took it that the Sub-Commission wished to amend the last sentence of the draft statement to read "The Sub-Commission requests to be informed ...".

61. It was so decided.

62. The CHAIRMAN read out the amended text of the draft statement, to wit:

"Concerned by the allegations that several hundred people were victims of extrajudicial executions in Togo in 1998, the Sub-Commission has taken note of the controversy which has arisen as to whether or not, or the extent to which, these allegations are true.

Considering that, taking account of this controversy, it was urgent that appropriate and effective investigation be undertaken in accordance with international norms and in an impartial and independent manner, so as to establish the truth.

Following the constructive discussions which the Togolese delegation had, including with the Office of the High Commissioner for Human Rights and members of the Sub-Commission,

The Sub-Commission

On the one hand, welcomes with satisfaction the initiative of the Togolese Government to create an international commission of inquiry in accordance with international norms;

On the other hand, also welcomes favourably the proposal of the Togolese Government to request the Secretaries-General of the United Nations and of the Organization of African Unity to set up the said commission of inquiry in accordance with international norms;

Takes note of the willingness of the Togolese Government to ask the Secretaries-General of the United Nations and of the Organization of African Unity to provide, as may be required, the assistance necessary for the proper functioning of the international commission of inquiry;

In addition, taking account of the observations of the Sub-Commission, the Togolese Government has undertaken to:

Provide the international commission of inquiry with help and assistance so that it will be able to accomplish its task with competence and within a reasonable time in accordance with international norms;

Take all appropriate measures to ensure that the competent authorities cooperate fully with the international commission of inquiry.

The Sub-Commission requests to be informed by the Secretaries-General of the United Nations and of the Organization of African Unity, at its next session, of the results of the efforts undertaken in the framework of the present declaration."

63. The Chairman's draft statement was adopted.

64. The draft resolution on the situation of human rights in Togo (E/CN.4/Sub.2/1999/L.7) was withdrawn by its sponsors.

65. Mr. RAMCHARAN (Deputy United Nations High Commissioner for Human Rights) said that the Sub-Commission had just taken an important decision. He wished to make it clear, however, that the discussions on the content of the statement just read out had taken place between members of the Sub-Commission, on the one hand, and the representatives of the Togolese Government, on the other. The Secretariat had taken no part in the substance of the discussions; it had simply been advised as the process unfolded.

66. The Secretariat would proceed with the implementation of the statement by, in the first instance, consulting the OAU with a view to securing the establishment of a commission of three persons.

67. It was the secretariat's understanding that the commission would report to the Secretaries-General of the United Nations and of the OAU, and that, on the basis of that report, the Secretariat would itself report to the Sub-Commission at its next session. It was also the Secretariat's understanding that the commission would follow internationally recognized norms for the conducting of commissions of inquiry. The Secretariat's intention was to ask the Legal Counsel of the United Nations to provide such norms and, if necessary, to determine any issues arising as to their content and ambit. An appeal would be made for voluntary funding to enable the exercise to be implemented. Appropriate consultations would take place with the Chairman of the Sub-Commission, the Togolese authorities, and with others in a position to assist the commission of inquiry. Lastly, it was also the Secretariat's understanding, having regard to the statement just made by the Togolese Minister and the content of the Chairman's statement just adopted, that it would be fair to allow Amnesty International to be involved in the process of consultation.

68. Mr. GUISSÉ said he hoped that the commission of inquiry would not consist of experts unfamiliar with Africa and its circumstances. Furthermore, the suggestion that Amnesty International should be officially involved in the process was unacceptable.

69. Mr. FAN Guoxiang said that, though he had joined in the consensus concerning the Chairman's statement, he agreed with Mrs. Warzazi that, in principle and whenever possible, texts of such statements should be made available in a more timely manner.

70. Mr. SORABJEE said he would like to know what criteria would be used for the appointment of the three members of the commission of inquiry, and what form the appointment process would take.

71. Mr. RAMCHARAN (Deputy United Nations High Commissioner for Human Rights) said that the nomination process to be adopted would be determined following consultations with the two Secretaries-General. In view of the fact that both Secretaries-General were African, it would be most surprising if the commission did not contain a significant African component.

72. As for Amnesty International, he had felt it necessary to mention that NGO because the Togolese Minister had alluded to its report in his statement. In the final analysis it would be for the commission of inquiry to

decide whom it wished to consult. However, as an Amnesty International report was involved, it seemed equitable to allow that organization the opportunity to submit information.

73. Mrs. WARZAZI said that she was totally opposed to associating any NGO with an official inquiry, although it was entirely appropriate that NGOs should be requested to submit reliable information thereto.

74. Mr. RAMCHARAN (Deputy United Nations High Commissioner for Human Rights) said he had never proposed that Amnesty International should be "associated" with the inquiry. He had said that Amnesty International was one of the organizations that would be consulted in the course of the inquiry.

75. Mr. WEISSBRODT said that a very appropriate solution had been found to the problem facing the Sub-Commission. All those involved in achieving it were to be congratulated.

76. Mr. EIDE said that he too was very pleased with the process that had taken place. He would have been shocked if Amnesty International had not been requested to provide information to the commission of inquiry.

77. Mr. JOINET said that it was the high cost of operating a commission of inquiry that had prompted the proposal that it should consist of three experts only. A last-minute decision to involve the OAU in the process had been taken the previous night precisely in response to concerns of the sort voiced by Mr. Guissé. Lastly, it was worth noting that Amnesty International was just one of a number of sources that had submitted information on Togo.

Draft resolution on the situation of human rights in the Congo (E/CN.4/Sub.2/1999/L.5)

78. Mr. BOSSUYT, introducing the draft resolution on behalf of its sponsors, said that paragraph 1 (a) should be revised to read: "To ensure respect for human rights and international humanitarian law".

79. Mrs. WARZAZI said that the balance of the resolution would be improved if an additional operative paragraph were added calling on all parties to the conflict to respect international human rights and humanitarian law.

80. Mr. BOSSUYT said that a paragraph 1 bis could be inserted, to read: "Requests all parties to the conflict to abide by their obligations under international humanitarian law". He hoped that his co-sponsors would be able to accept that amendment.

81. Mr. FAN Guoxiang requested that a vote be taken by secret ballot.

82. Mr. BIABAROH-IBORO (Observer for the Congo), expressing his delegation's opposition to the draft resolution, said that it had not been informed of the initiative in time to engage in dialogue and cooperation with the Sub-Commission. The draft resolution was purposeless because the political and security situation in his country had evolved considerably. No account had been taken by its sponsors of his delegation's intervention in exercise of the right of reply to a statement made by an NGO.

81. Since the end of the civil war in the Congo in 1997 the country had begun to hope again and the State to function again. A forum on peace, reconciliation, unity and reconstruction had been held and a transitional Parliament and Government set up; general and local elections were to be held in two or three years' time; measures had been taken to disband private militias and collect arms; and a number of State structures had been re-established.

84. Unfortunately, that had not been to the liking of those who had started the various civil wars and, during the census that was being carried out prior to the holding of general elections, armed attacks had occurred in a number of places, organized and financed by the defeated parties and supported by mercenaries including UNITA rebels. Those attacks had led to acts of violence and terrorism against civilians, the displacement of populations, hostage taking and, specifically, the use of hostages as human shields. The Government had appealed for peace and for the abandonment of violence, and had finally decided to put an end to the pernicious war in order to save the republic and national unity.

86. The various military actions had led to serious problems for the civilian populations of the areas concerned, but at no time had the Government ordered punitive actions to be taken against civilians. Indeed, with the help of the Red Cross and other humanitarian organizations, it had established a humanitarian corridor enabling civilians to reach safer places.

87. The Congo was well on the way to putting an end to the situation of insecurity and returning to normalcy. People were returning home; diplomatic missions were returning to Brazzaville; international flights had resumed; public legal and law enforcement activities had been reorganized; officers and men who had fought against the Government had returned to the ranks; the text of a new constitution had been submitted and, on 15 August 1999, the President had announced a general amnesty for all who laid down their arms and renounced violence.

87. It was no exaggeration to state that the draft resolution was completely out of date and wrong in its reference to unchecked allegations of deliberate massacres of civilians. The transitional Parliament had passed a law in April 1999 authorizing ratification of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Not everything was rosy in the Congo, but the draft resolution in question was an attempt further to pillory a country that had been ravaged by conflict and needed the sympathy and support of the international community. Voting for the draft resolution would give encouragement to those who were creating chaos and violence and working for the country's ethnic partition.

88. The CHAIRMAN put the draft resolution, as orally revised and amended, to the vote.

89. The vote was taken by secret ballot.

90. At the invitation of the Chairman, Mr. Fix Zamudio and Mr. Oloka-Onyango acted as tellers.

91. The draft resolution, as orally revised and amended, was adopted by 20 votes to 1, with 2 abstentions.

Draft resolution on the situation of human rights in Belarus
(E/CN.4/Sub.2/1999/L.6)

92. Mr. WEISSBRODT, introducing the draft resolution on behalf of its sponsors, said he understood that the observer for Belarus had an important statement to make which would affect the disposition of the draft resolution.

93. Mr. AGURTSOU (Observer for Belarus) informed the Sub-Commission of a number of undertakings his Government was willing to make to improve the situation of human rights in Belarus, all of which would appear in the Chairman's statement. He said that his Government looked forward to continuing its dialogue with the Sub-Commission in order to promote and protect human rights, which was their common objective.

94. The CHAIRMAN then read out the following draft statement:

"I would like to thank the Ambassador for his statement. It is my understanding, based on what you have just said Mr. Ambassador, that the Government of Belarus is prepared to take the following steps in order to further promote and protect human rights within the country:

First, that the Government of Belarus will invite the Special Rapporteur on the independence of the judiciary and the Working Group on Arbitrary Detention to visit the country, and that at least one of these visits will actually take place before the Sub-Commission convenes at the beginning of August 2000;

Second, that the Government of Belarus will undertake to do everything necessary during this coming year to join the Council of Europe and then sign and ratify the European Convention on Human Rights. The Government of Belarus will also make best efforts to withdraw its reservation to article 20 of the Convention Against Torture prior to the Sub-Commission convening at the beginning of August 2000;

Third, the Government of Belarus will undertake a series of legislative reforms to improve the protection of human rights and democracy. For example, next year the Government of Belarus will create a post of independent ombudsman and hold free and fair parliamentary elections. The Government of Belarus also recognizes that free and fair elections require at least providing equal access to State-controlled media, assuring that newspapers and magazines are not subject to censorship, and ensuring freedom of assembly and the right to peaceful demonstration;

Fourth, the Government of Belarus will prepare a written report to the Sub-Commission and submit that report in time to be distributed at the Sub-Commission's session in August 2000 as to the steps they have taken in this regard.

I would like to express any gratitude to the delegation of the Government of Belarus, and to the Ambassador for his statement. This statement is a very important indication of goodwill and commitment to the improvement of human rights within the country. These are very

positive developments and the Sub-Commission will look forward to the progress that the country of Belarus will make in the area of human rights over the coming year."

95. Mrs. WARZAZI said that, while she was a staunch advocate of the usefulness of dialogue and compromise, which could lead to positive results regarding the protection of human rights, and did not wish to oppose a consensus on the draft statement the Chairman had just read out, she wished to express her very strong objection to the Sub-Commission being involved in appeals or negotiations regarding the ratification of regional human rights instruments or in pushing a country into a regional human rights organization. That was not the task of the Sub-Commission.

96. Mr. ALFONSO MARTÍNEZ said he agreed that regional human rights instruments were not within the purview of the Sub-Commission. However, if negotiations between the sponsors of a draft resolution and the Government concerned led to a satisfactory outcome, the Sub-Commission could not really object. Nevertheless, the draft statement to replace the draft resolution on the situation of human rights in Belarus (E/CN.4/Sub.2/1999/L.6) had been agreed upon very recently, and he would like to see a copy of the text before any decision was reached concerning it.

97. Mr. GUISSÉ said that not only had no text been distributed, the statement by the observer for Belarus had not mentioned anything that had actually been done to improve the situation of human rights in that country. The Chairman's draft statement consisted merely of promises for the future. What if the Government of Belarus did not do what it promised to do? What sanctions were available to the Sub-Commission? A dialogue with States was all very well but there was a danger that the Sub-Commission might be opening a breach which could in future prove to be a serious distortion of its mission. The increasing number of Chairman's appeals and decisions might render the work of the Sub-Commission devoid of substance.

98. Mr. BENGOA concurred. The Chairman's draft statement referred to none of the very serious allegations of violations of human rights contained in the first paragraph of the draft resolution. A certain caution should be exercised when negotiating with States. He would not, however, oppose a consensus on the Chairman's draft statement.

99. Mr. JOINET said he disagreed entirely with Mr. Guissé. A draft resolution was merely a starting point, with a view to securing something more positive. If the Government of Belarus did not do what it had promised to do, another draft resolution would be tabled at the Sub-Commission's next session.

100. Mr. PINHEIRO agreed, saying that, if there had been a breach, as Mr. Guissé had argued, it was a welcome breach. A Sub-Commission resolution was merely an instrument to pursue an objective, and the public statement by the observer for Belarus surely represented a great success. He agreed in principle with Mrs. Warzazi that regional human rights instruments were not strictly speaking the concern of the Sub-Commission, but it could, at very least, show some enthusiasm when a State expressed its wish to adhere to a regional human rights instrument.

101. Mr. SORABJEE said that Mr. Guissé's point had some validity in that Governments had been known in the past to make promises and pledges which they had not kept in the event, but the proof of the pudding was surely in the eating. The Chairman's draft statement merely adjourned the debate on the draft resolution until the Sub-Commission's next session. It was more constructive for the Sub-Commission to secure a positive undertaking from a Government, than to doubt its bona fides and adopt a resolution. It would be clear in a year's time whether the Government of Belarus had done what it had said it would do.

102. Mr. EIDE said he shared the views expressed by Mr. Joinet, Mr. Pinheiro and Mr. Sorabjee, and, unlike Mrs. Warzazi, he saw nothing wrong in a Chairman's statement including a reference to regional human rights instruments.

103. Mr. RAMISHVILI said he agreed with Mr. Joinet. In fact, supporting and engaging in dialogue with Governments was one of the best ways in which the Sub-Commission could do its work. It was important to send a signal to Governments that, if they attended a Sub-Commission session, their views would be listened to by independent experts who did not merely reach for ready-made scenarios.

104. Ms. HAMPSON said she completely endorsed what Mr. Ramishvili and Mr. Joinet had said, but that she wished to clarify something said by Mr. Sorabjee. There would be no deferred consideration of the current draft resolution; a Chairman's statement meant that there was no corresponding resolution. However, nothing could stop a separate draft resolution being tabled at the Sub-Commission's next session. As for the point made by Mr. Bengoa, she considered that all the specific allegations of human rights violations referred to in the draft resolution were covered in the Chairman's draft statement. The draft resolution referred to unlawful detention, and the Working Group on Arbitrary Detention was being invited to visit Belarus. The draft resolution referred to allegations of violation of freedom of expression, especially political expression, and the Government of Belarus had stated that next year it would hold free and fair parliamentary elections and that it recognized that they would require providing equal access to State-controlled media and assuring that newspapers and magazines were not subject to censorship. The Government of Belarus was not being given a blank cheque: it had undertaken to submit a written report at least one month prior to the Sub-Commission's session in August 2000.

105. She disagreed strongly with Mrs. Warzazi on the subject of regional human rights instruments. If the Sub-Commission was looking for dialogue, cooperation and confidence and was promoting and protecting human rights, it was a matter of substance not of form. Both the Commission and the Sub-Commission had frequently advocated that States should ratify not only international human rights instruments but also regional ones. It was thus completely appropriate for the Sub-Commission to welcome the fact that a State intended to sign and/or ratify a regional human rights treaty.

The meeting rose at 1.05 p.m.